



ARKANSAS JUDICIARY

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## Rule 56. Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. Absent leave of court for good cause shown, the party must file any such motion no later than 45 days before any scheduled trial date.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. Absent leave of court for good cause shown, the party must file any such motion no later than 45 days before any scheduled trial date.

(c) Motion and Proceedings Thereon. (1) The motion shall specify the issue or issues on which summary judgment is sought and may be supported by pleadings, depositions, answers to interrogatories and admissions on file, and affidavits. The adverse party shall serve a response and supporting materials, if any, within 21 days after the motion is served. The moving party may serve a reply and supporting materials within 14 days after the response is served. For good cause shown, the court may by order reduce or enlarge the foregoing time periods. No party shall submit supplemental supporting materials after the time for serving a reply, unless the court orders otherwise. The court, on its own motion or at the request of a party, may hold a hearing on the motion not less than 7 days after the time for serving a reply. For good cause shown, the court may by order reduce the foregoing time period.

(2) The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law on the issues specifically set forth in the motion. A partial summary judgment, interlocutory in character, may be rendered on any issue in the case, including liability.

(d) Case Not Fully Adjudicated on Motion. If upon motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to

the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Reporter's Notes to Rule 56: - 1. Rule 56 is identical to FRCP 56 and also identical to superseded Ark. Stat. Ann. 29-211 (Repl. 1962) which tracked the Federal Rule. This rule makes no changes in Arkansas law.

Addition to Reporter's Notes, 2001 Amendment: - Subdivision (c) of Rule 56 has been divided into two paragraphs, the first of which is new. Paragraph (1) addresses motion and hearing practice under the rule. Other states have adopted similar provisions. See, e.g., Rule 56(c), Ariz. R. Civ. P.; Rule 56(c), Ind. R. Trial P.; Rule 237(c), Iowa R. Civ. P.; Rule 74.04(c), Mo. R. Civ. P. The original version of the rule led to several problems, including last-minute submissions by the party opposing a motion for summary judgment. The rule provided that the opposing party could submit opposing affidavits at any time "prior to the day of the hearing." By contrast, paragraph (1) establishes a time frame for the parties to follow and makes plain that additional submissions are not permissible without leave of court. As under prior practice, a hearing on the motion is not mandatory in all cases. See *Campbell v. Bard*, 315 Ark. 366, 868 S.W.2d 62 (1993). However, the new time frame effectively precludes the court from ruling on the motion until after the parties have had an opportunity to present their evidence. Corresponding changes have been made in Rules 12(i) and 78(b) to except summary judgment motions from their requirements.

Paragraph (2) provides for partial summary judgment on any issue in the case, including liability. The term "partial summary judgment" has not heretofore been used in the rule but frequently appears in the cases. See, e.g., *City of Russellville v. Banner Real Estate*, 326 Ark. 673, 933 S.W.2d 803 (1996). A similar provision, limited to liability, previously appeared in subdivision (c), and summary judgment on some but not all of the issues is plainly contemplated by subdivision (d).

Addition to Reporter's Notes, 2006 Amendment: - Several parts of Rule 56 governing the timing of motions for summary judgment, the related briefing, and the hearing have been amended. These changes continue the effort to refine the Rule by making summary-judgment practice more fair, predictable, and efficient.

The amendments to subdivisions (a) and (b) eliminate a party's right to seek summary judgment at any time. Instead, absent good cause, a party must move at least 45 days before any scheduled trial date. This deadline allows for full briefing and a hearing on the motion before trial, which should promote more efficient use of judicial resources. In addition, it prevents a party from using a late motion for summary judgment as a stealth motion for continuance.

Subdivision (c)(1) has been amended to allow the circuit court to reduce the time periods for responses and replies. Under the former Rule, the court could only enlarge the time periods. Both reductions and enlargements must now be justified by a showing of good cause. Finally, the presumptive period between the due date for any reply and any hearing has been shortened from 14 to 7 days. This change accommodates the pre-trial deadline for filing the motion, while giving the non-moving party adequate time to prepare for the hearing in light of any reply. Revised subdivision (c)(1) also allows the circuit court to shorten the seven-day period for good cause, for example, scheduling difficulties.

**History Text:**

History. Amended February 1, 2001; amended May 25, 2006

**Associated Court Rules:**

Rules of Civil Procedure

**Group Title:**

VII. Judgment

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